

Trusts - Duties of Trustees - Corporate and Professional Character of Trustee

Thomas J. Bergen

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TRUSTS—DUTIES OF TRUSTEES—CORPORATE AND PROFESSIONAL CHARACTER OF TRUSTEE.—The defendant trust company was duly appointed trustee of a certain estate which included the bonds in question. The plaintiffs were the beneficiaries of the trust. It was provided in the bonds that any of them might be retired previous to the date of maturity stipulated therein. It was provided also that the issuing debtor might deposit a sum of money before maturity with the bonding company, the trustee in the trust deed, expressing its desire to retire a portion of the bonded indebtedness. The bonding company would by lot draw the bonds to be retired. Holders of bonds so drawn were to be notified by personal letter or by publication once each week for three weeks in a newspaper of general circulation in the City of Milwaukee. The said bonding company, coming into receipt of funds from the issuing debtor, duly published a notice in the Milwaukee Journal of the retiring of all of the outstanding bonds. The trust company failed to see the notice and failed to present the bonds under its care for payment. The retiring date passed and the bonding company was shortly thereafter adjudged a bankrupt. The trust company filed its account as trustee. Upon objection by the beneficiaries the court charged the trustee's account with the sum lost to the estate as a result of the trust company's failure to present the bonds. On appeal, *held*, judgment affirmed; due diligence in the performance of a trustee's duties requires a high degree of fidelity, especially where the trustee is a professional trustee. *In re Church's Will*, (Wis. 1936) 266 N.W. 210.

A trustee generally must act with prudence, sagacity and vigilance in administering the estate under his control. He is personally responsible to the beneficiaries if the estate is impaired because he fails so to act. *Hutchinson v. Lord*, 1 Wis. 286 (1853); *Simons v. Oliver*, 74 Wis. 633, 43 N.W. 561 (1889); *Pabst v. Goodrich*, 133 Wis. 43, 113 N.W. 398 (1907). In *Estate of Dreier*, 204 Wis. 221, 235 N.W. 439 (1913), the court required that the trustee exercise more than ordinary diligence. Determinations as to what is due care, or as to what is more than ordinary diligence, are dependant entirely on the circumstances of time and place when the trustee took or failed to take the action in question. In the principal case the trustee's employees examined a number of newspapers published in Milwaukee but they did not examine the Milwaukee Journal. Moreover they had failed to detect a notice to the effect that the trust deed on the encumbered properties had been satisfied. It has been suggested that a trustee should be responsible to reimburse the estate only where he has been grossly negligent. Such is an obsolete minority view. *Cf. Harden v. Parsons*, 1 Eden 145, 28 Eng. Rep. 639 (1758), and *Barrell v. Joy*, 16 Mass. 221 (1819). In the principal case the trustee was a professional corporate trustee. In the case of *In re Clark's Will*, 242 N.Y. Supp. 210, 136 Misc. 881 (1930), affirmed in the intermediate appellate court without opinion, 250 N.Y. Supp. 781, the lower court suggested that a professional trustee or trust company should be held to a greater degree of care in the administration of a trust estate than could be expected of a private individual. In the particular case the alleged breach of trust was poor judgment in the matter of retaining securities which the trustee might have sold. The court of appeals was not particularly concerned about differences in standards to be applied in professional or non-professional cases. The court of appeals was satisfied that the trustee had made a mistake of judgment merely which any testator risks when he relies on the exercise of discretion with respect to a disposal of the estate by any trustee. *Matter of Clark*, 257 N.Y. 132, 177 N.E. 397, 77 A.L.R. 499 (1931). The Pennsylvania court has refused to recognize that there can be any higher standard of conduct imposed upon a

professional corporate trustee than that which can be imposed upon any individual. *In re Leonard's Estate*, 299 Pa. 32, 148 Atl. 912 (1930). The Wisconsin court has held that a trust company has not acted with due care for the beneficiaries' interests where the trust company failed to dispose of stock which it had previously purchased after the statute permitting the investment of stocks had been repealed. *Estate of Allis*, 191 Wis. 23, 209 N.W. 945 (1926). In that case and in the principal case the court said that a professional trustee, an incorporated company, should be held to a high standard of conduct in the administration of trust estates because it holds itself out as particularly competent for such duties.

THOMAS J. BERGEN.